

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.659 OF 2023**

**SHABBIR AHMED S/O SHAIKH ABDULLA AND ANR.
VERSUS
THE STATE OF MAHARASHTRA AND ORS.**

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Mr. S. S. Thombre, Advocate for the Petitioners.
Mr. D. R. Kale, In-charge G.P. for Respondent Nos.1 to 4.
Mr. S. R. Bagal, Advocate for Respondent No.5.
Mr. R. V. Gore, Advocate for Respondent No.6.

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**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 20.03.2023
PRONOUNCED ON : 06.06.2023**

FINAL ORDER (Per: Nitin W. Sambre, J.):-

1. Heard.

2. The challenge in the petition is to the order dated 9th December, 2022 passed by respondent nos.1-State Government thereby staying the permission granted for the construction of the Babasaheb Ambedkar Shopping Centre in Survey No.145.

3. Facts relevant for filing the present petition are as under:

The case of the petitioners is that in 1954 Kabala was executed in favour of the late Shaikh Ahmed Shaikh Imam, a soldier who fought first and second world war. According to him, the Kabala was issued by the Tahsil Office, Basmat i.e. under the aegis of of respondent no.4-Collector way back in 1994 after the price of plot was deposited. The said Shaikh Ahmed claimed to allegedly was the grandfather of the petitioners and said grandfather has obtained permission from respondent no.5-Municipal Council for carrying out construction on January 27,

1955. According to him, the grandfather of the petitioners used to reside in the said property and on August 1, 1992 the said property came to the share of the mother of the petitioners by virtue of an oral partition. It is claimed that, through mother the petitioners have become absolute owners of the aforesaid property.

The case of the petitioners is since respondent no.5-Municipal Council has tried to pressurized the petitioners to vacate the said premises, the same was prompted them to file a Suit being RCS No.239/1992 against respondent no.5, which was decided on 29th November, 2003, wherein the Suit claimed for perpetual injunction came to be dismissed. An appeal carried by the present petitioners being Regular Civil Appeal No.53/2004 came to be dismissed on 19th June, 2007 against which he would claimed that Second Appeal No.465/2007 is pending consideration in which there operates an ad-interim injunction against respondent no.5. According to the petitioners, since they are the owners of the aforesaid property they have got the same mutated in their names and after obtaining sanction from the Planning Authority i.e. respondent no.5 construction was started, which is stayed at the behest of a complaint lodged by respondent no.6, who was Vice President of respondent no.5-Municipal Council.

4. While assailing the order impugned the learned counsel for the petitioners would urge that the respondent-State Government ought not to have caused interference having regard to the fact that the matter is subjudice in Second Appeal No.465/2007 against respondent no.5-Municipal Council. He would urge that already temporary injunction is in operation

against the respondents and that being so, the permission for carrying out construction ought not to have been stayed. He would further rely on the order dated January 22, 2020 passed by respondent no.4-Collector whereby the mutation was ordered in favour of the petitioners subject to compliance of the certain conditions. As such, according to him the title of the suit property is very much vested in the petitioners.

5. While countering the aforesaid submissions, learned counsel for the respondents would urge that the petitioners right to enjoy the aforesaid property is under cloud as at their behest Second Appeal No.465/2007 is presently pending adjudication. According to him, the alleged document of Kabala of 1954 was not proved and as such, the issue of ownership of the petitioners was answered against them. The issue of lawful possession of the petitioners is also answered against the interest of the petitioners. Learned counsel for respondent no.5 would urge that as per the development plan the plot in question is reserved for the shopping complex.

6. It is further claimed that in Second Appeal No.465/2007 again the issue of ownership of the petitioners was re-appreciated and that being so, order impugned passed by the State Government is quite justified. It is claimed that in case if the petitioners are permitted to develop the property, the same will give rise to further complications particularly when the property is vested in respondent no.5-Municipal Council, who are intending to develop the shopping complex so as to strengthen its financial condition.

7. We have appreciated the said submissions.

8. The right of the petitioners against respondent-Municipal Council seeking perpetual injunction is subjudice in Second Appeal No.465/2007 in which the respondent-Municipal Council is restrained from taking any coercive action against the petitioners.

9. The fact remains that inspite of the above, there exist an order passed by the respondent-collector on 22nd January, 2020 whereby the prayer of the petitioners for grant of mutation was allowed.

10. It appears that, subsequent thereto the State Government having regard to the pendency of the Second Appeal No.465/2007 as has been claimed by the learned A.G.P. has passed the impugned order staying the construction permission granted in favour of the petitioners.

11. Admittedly, the stay granted by the respondent nos.1-State Government is without hearing the petitioners and the fact remains that the other litigation viz. the Second Appeal No.465/2007 is already pending before this Court.

12. Once the State Government has passed an ad-interim order thereby staying the permission, it was expected of the State Government to deal with the claim of the complainant i.e. respondent no.6 as expeditiously as possible as respondent no.6, has lodged complaint in his individual capacity against the petitioners. In case, if the stay is permitted to be continued, it is the petitioners who shall be suffering losses and not respondent no.6 as respondent no.6 has nothing to loos in the matter. The respondent no.6 has claimed that he has filed complaint so as to

protect the interest of the residents of respondent no.5-Municipal Council.

13. In this background, we deem it appropriate to dispose of the present writ petition with direction to respondent no.1-State Government to decide the issue subjudice before it, which has laid to passing of the impugned order as expeditiously as possible and in any case within a period of four months from the date of appearance of the petitioners before it. We direct the petitioners to appear before the State Government on 12th June, 2023.

14. With the above observations, we dispose of the present petition.

(S. G. CHAPALGAONKAR)
JUDGE

(NITIN W. SAMBRE)
JUDGE